IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 34275 of 2007(E)

AGAINST THE ORDER DATED 30/04/2007 IN CRRP 82/2006 IN CRA.676/2006 of VI ADDL.DISTRICT COURT, ERNAKULAM
CC.241/2003 of J.M.F.C.-II, KOCHI

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PETITIONER:

D.V.GOPINATHA KAMATH, S/O.
D.J.VENKITESWARA KAMATH, AGED 59 YEARS,
RESIDING AT PRESENT - SREEVEL HOUSE,
CHAKKAMADAM ROAD, JEW TOWN, MATTANCHERRY, KOCHI-2.

BY ADV. SRI.V.SANTHARAM
SRI.ANTO THOMAS

RESPONDENTS:

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1. PRAKESH,
DOOR NO.VIII/14 (NEW NO.V/10), SANGEETHA,
PADASSERRY PARAMBU, L.G.PAI ROAD, KOCHI.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

W.P.(C) No. 34275 OF 2007

Dated this the 4th day of December, 2007

J U D G M E N T

The petitioner is the complainant in a prosecution under Section 138 of the Negotiable Instruments Act, 1881. He was found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I. Act by the trial court. He was sentenced to undergo imprisonment till rising of court and to pay the actual cheque amount of Rs.1,40,000/- as compensation and in default, to undergo simple imprisonment for a period of two months. The accused preferred an appeal against the verdict of guilty, conviction and sentence. Dissatisfied with the sentence imposed, the petitioner herein also preferred a revision petition before the learned Sessions Judge.

2. The learned Sessions Judge took up the appeal as well as the revision for disposal together. Both the appeal and the revision petition were dismissed.

3. A second revision is not maintainable and the petitioner has hence come to this Court with this writ petition raising the grievance that the sentence imposed is extremely

inadequate and perversely disproportionate to the gravity of the alleged culpable conduct. It is, in these circumstances, prayed that the sentence imposed by the courts below may be set aside and they may be directed to impose an appropriate sentence consistent with the gravity of the culpable conduct alleged against the accused.

4. The cheque is for an amount of Rs.1,40,000/- and it bears the date 31.10.02. The learned counsel for the petitioner submits that the sentence imposed is totally inadequate. Directing the accused to pay the actual cheque amount of Rs.1,40,000/- - five years after the date of the cheque does not, in any way, work out justice, argues the learned counsel for the petitioner.

5. The said contention does appear to me to be impressive. I agree with the learned counsel for the petitioner that the mere fact that no minimum sentence is prescribed is no reason to impose a flee bite sentence unmindful of the gravity of the offence. But, I must alertly take note of the nature and quality of the jurisdiction that I am called upon to exercise. The jurisdiction under Article 226 of the Constitution of India is sought to be invoked. Such jurisdiction can certainly be invoked to

prevent miscarriage of justice. But, in the facts and circumstances of this case, where the offence alleged is only one punishable under section 138 of the Negotiable Instruments Act, I am not persuaded to agree that the sentence imposed suffers from any such vice as to justify or warrant the invocation of the extraordinary constitutional jurisdiction under Article 226 of the Constitution. May be, if this court were considering the matter as a trial, appellate or revisional court, a higher quantum of compensation, at least, would have been directed to be paid to the victim. But that, according to me, is no reason to invoke Article 226 of the Constitution. I find no merit in the contention that the accused is willing to undergo incarceration for the default sentence of two months which he would not have done if substantive sentence of imprisonment were imposed. I do not find any merit in this petition.

6. This writ petition is accordingly dismissed.

(R.BASANT, JUDGE)

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